

language that has been filed by ISO on a nationwide basis. Thus, approval of the language places Louisiana on par with other states. Use of the new exclusion will expedite the form review and approval process.

The LDI is hereby advising insurers that it will approve policies that utilize the new exclusion. Further, the agency will approve pollution exclusions that are substantially similar to the new ISO exclusion, or to the ISO exclusions referenced in Advisory Letter 97-01.² The LDI will continue to approve policies that use the suggested language that it has made available to insurers since 1998. [To acquire copies of the ISO Pollution Exclusion Endorsements referenced in the advisory letter, please contact ISO Customer Service at (800) 888-4476 or by e-mail to www.iso.com.]

The LDI is hereby advising all admitted insurers that it will no longer approve policies that include in the text of the policy any version of the ISO Total Pollution Exclusion or substantially similar non-ISO total pollution exclusions.³ The LDI has approved the use of CG 21 65 09 99 as an endorsement to insurance policies. This endorsement, or one substantially similar to it, if approved for use in Louisiana, may be attached to policies issued to classes of insureds or individual insureds that are required to provide proof of financial responsibility for clean-up costs and related expenses for environmental damage to a federal, state, or local environmental regulatory agency. Additionally, insurers may use such an exclusion in situations other than as previously described when there is underwriting justification for its use.

Admitted insurers can elect to:

1. file notice of adoption of the ISO exclusion; or
2. file revised forms with the Commissioner of Insurance on or before March 30, 2002.⁴

After June 30, 2002, insurers that issue new or renewal policies that contain pollution exclusions that are inconsistent with this advisory letter will be issued an order withdrawing the approval previously granted, as authorized by LSA-R.S. 22:620.C.

Further, the LDI is hereby advising surplus lines insurers that use of a total pollution exclusion in the text of an insurance policy or the excessive use of such an exclusion as an endorsement to insurance policies, in the absence of underwriting justification, could result in removal from the white list.

¹ISO form number CG 26 75 01 02 for use with general liability forms and CG 31 40 01 02 for Owners and Contractors Protective Liability forms. The new exclusion adds language that resolves key areas of concern on the part of the LDI, particularly in regards to indoor occurrences.

²Those exclusions are CG 04 28 07 98, CG 04 29 07 98 and CG 04 30 07 98. Advisory Letter 97-01 can be viewed at www.ldi.state.la.us, currently listed under the icon LDI Office Index. Then click on Legal Department. For personal lines please see Directive 137 at the same website.

³CG 21 49 11 88.

⁴This provision is not applicable to insurers that have already obtained approval and are using a pollution exclusion that has an exception for pollution incidents that are accidental, occur suddenly and last for a short term, if they implement use of such an exclusion across all lines of business.

Any questions regarding this Advisory Letter may be directed to Kathlee Hennigan, Director of the Property and Casualty Division, at khennigan@ldi.state.la.us or by telephone at (225) 342-0073 or to C. Noël Wertz, Chief Attorney, Property and Casualty Section at nwertz@ldi.state.la.us or by telephone at (225) 342-4632.

J. Robert Wooley
Acting Commissioner

0202#037

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Department of Insurance Office of the Commissioner

Advisory Letter Number 01-02
December 28, 2001

To: All Property and Casualty Insurers Admitted or Approved to Issue Policies Insuring Risks in Louisiana

Re: Use of Mold Exclusions in Insurance Policy Forms

Statute and Regulation References: Title 22 of the Louisiana Revised Statutes §§2, 620, 621, 1211 et seq., and 1262.1.

Please be advised that after due consideration, the LDI has determined that it will allow the use of insurance policies and/or endorsements that exclude coverage for mold if the exclusion is directed at precluding coverage for:

1. remedial costs, such as the costs of testing the insured premises for mold, or the cost of containment or fumigation of the insured premises, whether the mold is the result of a covered cause of loss or otherwise; or
2. mold that is not the result of a covered cause of loss.

Insurers doing business in Louisiana should take note that standard homeowner's policies do not provide coverage for "seepage" or for damage arising from wear and tear or the failure to do proper maintenance. More importantly, unlike most states there is very limited punitive damages exposure in Louisiana.

Insurers should make every effort to develop exclusions that are narrowly drafted. Further, such exclusions should not be used to deny coverage for the costs of repair and restoration of the insured premises for damages arising from a covered cause of loss, even if some mold is present.

Any questions regarding this Advisory Letter may be directed to Kathlee Hennigan, Director of the Property and Casualty Division, at khennigan@ldi.state.la.us or by telephone at (225) 342-0073 or to C. Noël Wertz, Chief Attorney, Property and Casualty Section at nwertz@ldi.state.la.us or by telephone at (225) 342-4632.

J. Robert Wooley
Acting Commissioner

0202#038

**ADDENDUM
TO
ADVISORY LETTER NUMBER 01-02**

September 16, 2005

**TO: ALL PROPERTY AND CASUALTY INSURERS ADMITTED OR
APPROVED TO ISSUE POLICIES INSURING RISKS IN LOUISIANA**

**RE: Use of Mold Exclusions in Insurance Policy Forms Providing First Party
Property Damage Coverage
Clarification of Advisory Letter 01-02**

STATUTE AND REGULATION REFERENCES:

**Title 22 of the Louisiana Revised Statutes §§ 2, 620-621, 1211 et seq., and 1262.1
Regulation 78**

It has come to the attention of the Department that there is some misunderstanding regarding the intent of Advisory Letter 01-02. It is the purpose of this Addendum to clarify this agency's intent regarding approval of new mold exclusions developed in response to the much publicized *Linda Ballard* case in Texas.

What's Covered

Property policies cover damage caused by water if the underlying cause is a covered cause of loss. For example, during a storm a tree branch falls and causes damage to the roof, allowing water into the insured property; or a waterpipe cracks or bursts and water escapes and causes property damage including ruined sheetrock and carpet. Under the policy, the insurer is obligated to replace and/or repair the damaged property. If mold appears on the wet sheetrock or carpet, the insurer is not relieved of its obligation to make the covered repairs, including, taking the usual and customary steps of treating the damaged area with bleach and thoroughly drying it out. However, in the absence of a specific remediation coverage provision, an insurer does not have a separate obligation to **remediate** any damage arising directly from mold.¹

The presence of mold does not convert a covered claim arising from a covered cause of loss to a non-covered claim. On the other hand, the presence of mold does not create new and distinct obligations to remediate, decontaminate or otherwise remove the mold unrelated to the repair or replacement of the water-damaged property.

What's Not Covered

¹ *Remediate/remediation* as used herein includes, but is not limited to the testing, investigation, treatment, containment, decontamination, removal or disposal of Mold.

Property policies have traditionally excluded coverage for “rust, **mold**, dry or wet rot.” For example, a policyholder leaves a window open and it rains, causing moisture to enter the property. Mold develops and spreads ruining sheetrock and carpet. The **mold** exclusion would exclude coverage.

Acceptable Exclusions

Please be advised that after due consideration, the LDI has determined that it will allow the use of insurance policies and/or endorsements that exclude coverage for mold that results from a covered cause of loss if the exclusion is directed at precluding coverage for remedial costs, including but not limited to the costs of testing the insured premises for mold, or the cost of eradication, containment or fumigation of the insured premises; however such exclusions shall not exclude coverage for the removal of mold on the items damaged.

The LDI will continue to approve the standard exclusion for “mold, rust, wet or dry rot” which has been traditionally included in property policies.

Insurers doing business in Louisiana should take note that standard homeowner’s policies do not provide coverage for “seepage” or for damage arising from wear and tear or the failure to do proper maintenance. More importantly, unlike most states there is very limited punitive damages exposure in Louisiana.

General Liability Coverage - Personal and Commercial

Advisory Letter 01-02 is not applicable to General Liability Coverage, personal or commercial lines. Insurers may exclude all coverage for damages alleged to arise from mold, rot or fungus or any other such similar airborne spores. In accordance with La. R.S. 22:621, such exclusions should be specific as to the risk being excluded, be unambiguous, and not overly broad.

Any questions regarding Advisory Letter 01-02 or the 2005 Addendum may be directed to Paula Pellerin-Davis at pdavis@ldi.state.la.us or to Clarissa Preston at cpreston@ldi.state.la.us. They may also be reached by telephone at 225-342-5203.

J. ROBERT WOOLEY
ACTING COMMISSIOER OF INSURANCE